

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:F:[REDACTED]:POSTF-158897-01

JAN 23 2007

date:

to: LMSB Team Manager, [REDACTED], [REDACTED]

from: Associate Area Counsel, [REDACTED]

CC:LMSB:FS:[REDACTED]

subject:

Form 872

Taxable Year [REDACTED]

Statute of Limitations: [REDACTED]

This memorandum responds to your request for advice regarding extending the statute of limitations for the above-mentioned consolidated group's [REDACTED] taxable year. This memorandum should not be cited as precedent.

[REDACTED] is organized as a [REDACTED] business trust, an unincorporated business organization with transferable shares, and conducts its business through its operating subsidiaries. [REDACTED] was the parent of an affiliated group which filed a consolidated federal income tax return for the [REDACTED] taxable year. [REDACTED]'s principal subsidiaries are [REDACTED] a regulated utility company and [REDACTED]. [REDACTED] also engages in a number of non-utility businesses, including [REDACTED] through a joint venture with [REDACTED], and the provision of [REDACTED]. Entities formed as [REDACTED] business trusts rather than corporations benefit from potential [REDACTED] income tax savings accorded trusts and the lower filing fees payable by a trust in connection with its authorized capital stock.

[REDACTED] ( [REDACTED] ) is also organized as a [REDACTED] business trust. [REDACTED] was the parent of an affiliated group which filed consolidated federal income tax returns. [REDACTED] had subsidiaries, including [REDACTED] operating public utility companies and several subsidiaries engaged in other business, such as [REDACTED]

and [REDACTED]

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was organized on as a business trust with transferable shares to be the new holding company for and . Prior to the merger, and together owned all of 's outstanding common shares. As the result of the merger, and became subsidiaries of , the holding company for the combined businesses. This was accomplished by the merger of acquisition subsidiaries of into each of and with and as the surviving companies. The shareholders of and had the option to elect to receive shares of or cash for the shares of or they held prior to the merger. The subsidiaries of and prior to the merger remain subsidiaries of and . and remain in existence as subsidiaries of .

Your office is currently considering the consolidated return for and Subsidiaries for the taxable year and has requested our advice with respect to a Form 872 to extend the statute of limitations for the consolidated group for .

Generally the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas.Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas.Reg. §1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas.Reg. §1.1502-77 shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas.Reg. §1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas.Reg. §1.1502-6(a).

Temporary Regulation §1.1502-77T(a)(4) provides for agents if the common parent ceases to be the common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulation §1.1502-

77(T)(a)(4)(i), an agent for the group is "the common parent of the group for all or any part of the year to which the notice or waiver applies." Temporary Regulation § 1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp.Reg. § 1.1502-77T(b). Therefore, said regulation provision is applicable in this case.

In this case the common parent taxpayer, [REDACTED], is still in existence and, therefore, is the agent for the consolidated group in existence in [REDACTED] under the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i). Therefore, based on the facts provided, we conclude that the Form 872 should be executed by a current officer of [REDACTED]. The caption on the Form 872 should be as follows: [REDACTED] and includible Subsidiaries\*; i.e., the name set forth on the [REDACTED] return. At the bottom of the page you should add, by way of explanation, the following statement: \*This is with respect to the consolidated federal income tax liability of the [REDACTED] and Subsidiaries consolidated group for the group's taxable year ending December 31, [REDACTED].

The signature block on the Form 872 should read as follows:

Name of Officer  
Title of Officer  
[REDACTED]

Please insure that [REDACTED]'s EIN is recorded in the box indicated on the Form 872.

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas.Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at ([REDACTED]) [REDACTED].

[REDACTED]  
Special Litigation Assistant